IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Misc.Application No.1522 of 2005
in
Criminal Application No.5588 of 2004

Mr. K. M.Sethia and anr. ..Petitioners.

Vs.

Smt. Sippy Jay Sethia and anr. ..Respondents.

Smt. Teja Katdare for the applicants.

Mr. Adenwakla for the respondents.

CORAM : A.M. KHANWILKAR,J.
DATED : 27/9/2005.

1. Heard counsel for the parties.

2. Although the relief prayed in this application is for recalling the order dated 16.12.2004, in my opinion, application can be disposed of by clarifying the position stated in my order dated 16.12.2004.

3. The proceeding before me being Criminal Application No.5588/2004 arose out of order passed by the Metropolitan Magistrate 27th Court, Mulund, Mumbai dated 9.6.2001 granting bail to accused Nos. 1 to 3. The grievance before me was that certain observations were made in the said order which would affect the interest of the applicants therein. While considering the said submission, the said application was disposed of by following order;

> "This application can be disposed of with the observations that the court below shall decide the discharge application or the trial as the case may be on its own merits in accordance with law, uninfluenced by the observations in the order dated 9.6.2001 or the remand application dated 9.6.2001. Ordered accordingly."

The apprehension of the present applicants is that this order will be misconstrued by the Trial Court against the interest of the applicants. In as much as, That even the statement made by the complainant as recorded by the court in its order 9.6.2001 as well as another order dated 9.6.2001 will not be considered which will result in prejudice to the applicant. The complainant had stated during the hearing on remand application and bail application that she has no grievance against the accused Nos. 1 and 3 i.e. husband and mother in law and had only grievance against the accused No.2-father-in-law.

4. It is unnecessary to enter into the controversy. The apprehension is misplaced. All that I have said in my order dated 16.12.2004 is that the Trial Court will decide the matter on its own merits in accordance with law. In other words, the Trial Court would be free to examine the relevant aspects of the case on the basis of the evidence adduced at the time of trial, including the

efficacy of the statement of the complainant before the court on the abovesaid dates.

5. Accordingly, reliance placed on the decisions by the counsel for the respondent in the case of **Niranjan Singh and an other Vs. Prabhakar Rajaram Kharote and ors. reported in A.I.R.1980 S.C.785, Kashi Nath Roy Vs. State of Bihar reported in 1996 CRI. L.J. 2469 and in the case of Nagappa Poojari Vs,. State of Karnataka reported in 1994 CRI.L.J. 2185,** is inapposite. I am not at all reviewing the order passed by me earlier but clarifying the position as aforesaid. Ordered accordingly.

(A.M. KHANWILKAR, J.)